IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 68 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SARABHAI PRIVATE LTD.

Versus

COMMISSIONER OF INCOME TAX

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Appearance:

1. INCOME TAX REFERENCE No. 68 of 1992
MR BD KARIA for RK PATEL for Petitioner No. 1
MR TANVISH U BHATT for Respondent No. 1

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CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 16/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue as well as the assessee, the following questions have been referred to this court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench 'B', under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for the Assessment Years 1976-77 and 1977-78.

At the instance of the Assessee

For Assessment Year 1976-77

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that income derived by providing various services to the tenants were not composite and were not assessable as profits and gains of business under sec. 28 of the I.T. Act?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the disallowance of repairs made by the assessee to the tune of Rs. 3,00,584/-?

For Assessment Year 1977-78

1. Whether, on the facts and in the circumstances, of the case, the Tribunal was justified in holding that income derived by providing various services to the tenants were not composite and were not assessable as profits and gains of business under sec. 28 of the I.T. Act?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the disallowance of repairs made by the assessee to the tune of Rs. 1,69,736/-?

At the instance of the Revenue

For Assessment Year 1976-77

1. Whether the Appellate Tribunal is right in law and on facts in holding that income by way of rent was chargeable as income from house property and income derived by providing services will be chargeable as income from other sources under the provisions of sec. 56 and 57 of the Income-tax Act?

2. Whether the Appellate Tribunal is right in law and on facts in confirming the order made by the CIT(A) wherein he had directed the ITO to allow depreciation on assets used in providing services?

For Assessment Year 1977-78
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1. Whether the Appellate Tribunal is right in law and on facts in holding that income by way of rent was chargeable as income from house property and income derived by providing services will be chargeable as income from other sources under the provisions of sec. 56 and 57 of the Income-tax Act?

2 Whether the Appellate Tribunal is right in law and on facts in confirming the order made by the CIT(A) wherein he had directed the ITO to allow depreciation on assets used in providing services?

2. We have heard learned advocate Shri Bhargav Karia for the applicant-assessee and Standing Counsel Shri Tanvish Bhatt for the respondent revenue.

3. The learned advocates have very fairly submitted that the questions, which have been referred to this court at the instance of the assessee as well as the revenue, were subject-matter of Income Tax Reference No.134 of 1988, which was decided by this court on 21.11.2002. It has been submitted by them that in I.T.R. No. 134/88, this court was concerned with the questions, which had arisen for the Assessment Years 1974-75 and 1975-76.

4. The facts, which have given rise to this reference, in a nutshell, are as under:

5. The assessee owned a building, which was given on rent. In addition to giving the building on rent, the assessee had rendered certain services to the tenants and

the assessee used to get amount not only towards rent but also towards services rendered by it. The assessee used to provide several services to the tenants in the nature of house keeping, canteen facilities etc.

6. The question was whether the amount, which was received by the assessee, should be taxed as 'income from house property' or 'income from other sources' or income from 'profits and gains of business or profession.'

7. After considering the facts of the case and looking at the law laid down by the Hon'ble Supreme Court, in I.T.R. No. 134/88 this court held that the amount of rent, which the assessee had received, should be treated as 'income from house property', whereas the amount, which the assessee had received towards services rendered to its tenants, should be treated as 'income from profits and gains of business or profession' because the assessee was in the business of leasing its properties and was also rendering services to its tenants as a part of its business.

8. Looking to the law laid down in I.T.R. No. 134/88, the questions, which have been referred to this court, are answered as under.

9. Question No. 1, which has been referred to this court at the instance of the assessee for the Assessment Years 1976-77 and for 1977-78, is answered in the negative, i.e., in favour of the assessee and against the revenue because the income received by the assessee by providing services would not be chargeable as 'income from other sources' but it would be chargeable under the head 'income from profits and gains of business or profession' whereas the income received by way of rent shall be chargeable as 'income from house property'.

10. So far as question No. 2 for both the assessment years is concerned, we are unable to answer the same as we do not know the nature of the assets, which were repaired. If the amount was spent for repairing the building, the expenditure incurred should be deducted from the amount of rent received, which would be chargeable under the head 'income from house property'. If the expenditure was incurred for repairing other assets, which were required for providing services to the tenants, the amount of expenditure should be deductible under the head 'profits and gains of business or profession'. The Tribunal shall find out the nature of the assets, which were repaired and shall pass appropriate order after considering the law laid down in

11. So far as the questions, which have been referred to this court at the instance of the revenue for A.Y. 1976-77 and 1977-78 are concerned, as both the questions are almost common, they are answered as under.

12. So far as the first question for the both the assessment years is concerned, we are of the view that the income of rent should be charged as 'income from house property' and, therefore, we hold that the Tribunal was justified in treating the income from rent as income from house property. However, in our opinion, the Tribunal was not right when it decided that the income received by the assessee by rendering services to its tenants should be treated as 'income from other sources'. We, therefore, answer the said portion of the question in the negative and we direct that the said income should be treated as income from 'profits and gains from of or profession.'

13. So far as the second question for both the assessment years is concerned, we answer the same in the affirmative, i.e., in favour of the assessee and against the revenue.

The reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(A.M. Kapadia, J.)

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